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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 571*

13 **OLENA M. SCOTT**
519 Southport Way
Vallejo, CA 94591

ACCUSATION

14 **Registered Nurse License No. 506563**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about November 15, 1994, the Board of Registered Nursing issued Registered
23 Nurse License Number 506563 to Olena M. Scott ("Respondent"). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2014, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license.

9 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
10 surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed
11 with a disciplinary action during the period within which the license may be renewed, restored,
12 reissued or reinstated.

13 RELEVANT LICENSING STATUTES AND REGULATIONS

14 7. Section 2761 of the Code states:

15 "The board may take disciplinary action against a certified or licensed nurse or deny an
16 application for a certificate or license for any of the following:

17 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

18 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
19 functions.

20 "..."

21 8. California Code of Regulations, title 16, section 1442, states:

22 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
23 the standard of care which, under similar circumstances, would have ordinarily been exercised by
24 a competent registered nurse. Such an extreme departure means the repeated failure to provide
25 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
26 situation which the nurse knew, or should have known, could have jeopardized the client's health
27 or life."

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9. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

10. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

...

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 STATEMENT OF FACTS

6 12. At all relevant times Respondent was employed at Kaiser Permanente Hospital
7 ("Kaiser") in Vallejo, California.

8 13. At approximately 7:20 a.m., on July 27, 2009, Respondent accepted the assignment of
9 Patient A, an 85 year-old male with lung cancer, pneumonia, diabetes, congestive heart failure
10 and acute renal failure who was on respiratory isolation. After accepting the assignment,
11 Respondent told a group of nurses that she could not take care of Patient A because she had not
12 been "fit tested."¹

13 14. Respondent did not advise nursing management of her inability to care for Patient A
14 pursuant to the Kaiser's Chain of Command policy.² At approximately 8:10 a.m., Respondent
15 received a critical lab value on Patient A, with a laboratory report that his potassium level was
16 7.0 meQ/L.³ Respondent paged Patient A's physician at 8:30 a.m., to report the critical lab
17 result. Respondent did not assess Patient A's condition after receipt of the critical lab value.

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20 ¹ Fit testing refers to the process by which healthcare workers are fitted with appropriate
21 sized respirators (masks) such that a tight seal is formed around the face to filter out small
22 airborne infectious/contagious agents. The appropriately sized respirator is then worn when a
healthcare worker has contact with a patient on "respiratory precautions" to prevent the
transmission of disease to the healthcare worker and to prevent the healthcare worker from
transmitting the infectious agent to other staff, patients and visitors.

23 ² Kaiser's Chain of Command Policy (aka Escalation of Concern) provides in relevant part
24 that: "Any member of the health care team who has a concern regarding patient safety is
25 obligated to escalate the issue until the concern is resolved. If, at any time, the healthcare team
26 member feels that appropriate action has not been taken and/or the concern has not been
adequately addressed, he/she has the responsibility to escalate the issue along the chain of
command until the concern is resolved to his/her satisfaction"

27 ³ A normal blood potassium level is 3.6 to 5.2 millimoles per liter. A blood potassium
28 level of 7.0 or higher requires immediate treatment as this condition can lead to sudden death
from a cardiac arrhythmia.

1 Respondent had telephone contact with Patient A's physician at 9:20 a.m., at which time a verbal
2 order was taken to repeat blood tests.

3 15. At approximately 9:30 a.m., another nurse volunteered to relieve Respondent of her
4 assignment to Patient A. Shortly after receiving a report from Respondent, this relief nurse went
5 to assess Patient A and discovered that he was deceased.

6 FIRST CAUSE FOR DISCIPLINE

7 (Gross Negligence/Incompetence – Patient Abandonment)

8 16. Respondent is subject to disciplinary action for gross negligence and/or incompetence
9 pursuant to Code section 2761(a)(1), in that she assumed the assignment of caring for Patient A
10 and then failed to ensure that he was provided with nursing care. The facts in support of this
11 cause for discipline are set forth above in paragraphs 12 through 15.

12 SECOND CAUSE FOR DISCIPLINE

13 (Gross Negligence/Incompetence – Failure to Timely Notify

14 Nursing Management of Inability to Provide Care to Patient A)

15 17. Respondent is subject to disciplinary action for gross negligence and/or incompetence
16 pursuant to Code section 2761(a)(1), for failing to timely notify Kaiser nursing management that
17 she was unable to provide care to Patient A. The facts in support of this cause for discipline are
18 set forth above in paragraphs 13 and 14.

19 THIRD CAUSE FOR DISCIPLINE

20 (Gross Negligence/Incompetence – Failure to Timely Notify Physician of
21 Critical Lab Value)

22 18. Respondent is subject to disciplinary action for gross negligence and/or incompetence
23 pursuant to Code section 2761(a)(1), for failing to timely notify Patient A's physician of his
24 critical potassium lab value. The facts in support of this cause for discipline are set forth above in
25 paragraph 14.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Gross Negligence/Incompetence – Failure to Assess Patient Upon
3 Report of Critical Lab Value)

4 19. Respondent is subject to disciplinary action for gross negligence and/or incompetence
5 pursuant to Code section 2761(a)(1), for failing to assess Patient A after she received a report that
6 his potassium level was at a critical level. The facts in support of this cause for discipline are set
7 forth above in paragraphs 14 and 15.

8 PRAYER


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 506563, issued to Olena
12 M. Scott;

13 2. Ordering Olena M. Scott to pay the Board of Registered Nursing the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: JANUARY 19, 2013

18 *for* 
19 LOUISE R. BAILEY, M.ED., RN
20 Executive Officer
21 Board of Registered Nursing
22 Department of Consumer Affairs
23 State of California
24 Complainant

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